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No. 205] NEW DELHI, FRIDAY, OCTOBER 3, 1958/ASVINA 11, 1880

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 25th September 1958

S.O. 2057.—Whereas the election of Shrimati Sucheta Kriplani as a member of the Lok Sabha from the New Delhi constituency of that Sabha has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (43 of 1951) by Shrimati Gurcharan Kaur and subsequently substituted by Shri Amir Chand, resident of House No. N-12, Jangpura Extension, New Delhi;

And whereas the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act, for the trial of the said election petition, has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order in the said election petition to the Commission;

Now, therefore, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

BEFORE SHRI KARTAR SINGH CAMPBELLPURI, MEMBER, ELECTION TRIBUNAL, DELHI

Shri Amir Chand—*Petitioner*

vs.

Shrimati Sucheta Kriplani—*Respondent*.

PETITION No. 117/57

APPEARANCES—

Shri V. P. Joshi, Adv.; Shri Ram Phal Bansal, Adv. & Shri Baij Nath Aggarwal, Pleader—for the *Petitioner*.

Shri Ranjit Singh Nirula, Adv. and Shri H. L. Anand Adv.—for the *Respondent*.

JUDGMENT

This petition was originally filed by Maharani Gurcharan Kaur of Nabha, one of the defeated candidates against the successful candidate Mrs. Sucheta Kriplani who was returned as Member of the Parliament (Lower House) from New Delhi Parliamentary constituency No. 394 during the last General Elections held in March, 1957. The Maharani however applied before the Election Commission, India, soon after the lodging of the petition for the withdrawal of the petition U/s 108 of the Representation of People Act, 1951. As the petition had not been referred by that time to any Tribunal for trial, the Election Commission on the consideration of the reasons given in the petition allowed her to withdraw the petition and a notice of withdrawal U/s 110(3)(b) of the R.P. Act was issued and published in the Gazette

of India dated 1.6.57. One Shri Amir Chand, a voter, however made an application for being substituted as a petitioner in place of the withdrawing petitioner on 14.6.57 within the prescribed period of 14 days thereof, and the Election Commission after satisfying itself of the conditions laid down under Section 110(3)(c) of the R.P. Act 1951, substituted him as Petitioner.

2. The petition was accordingly published in the Govt. of India Gazette in due course and a Tribunal was set up for the trial of the Petition. On the issue of notices to the parties by the Tribunal, the counsel for respondent No. 1, Smt. Sucheta Kriplani, raised an objection to the Election Commission's order whereby Shri Amir Chand was substituted in place of the withdrawing petitioner, and the Tribunal, on hearing both sides came to the conclusion that it was not open to the Tribunal to review the order of the Election Commission because the powers of the Election Commission and that of the Tribunal are concurrent in this matter according to the scheme of the Act itself. The objection of respondent No. 1 was, therefore repelled and the case proceeded calling upon the respondent to file written statement on 3.9.58.

3. The contesting candidates for election to the Lok Sabha from the New Delhi Parliamentary constituency initially were—

1. Maharani Gurcharan Kaur, the original petitioner (Independent),
2. Shrimati Sucheta Kriplani, respondent No. 1 (Congress),
3. Shri C. P. Aggarwal, (Independent).
4. Shri Balraj Madhok (Jan Sangh) and
5. Mrs. Manmohini Sehgal (Independent).

The last mentioned candidate Mrs. Manmohini Sehgal however gave notice of retirement from the contest at the above election on 19.2.57 under rule 16 of the Conduct of Election & Election Petitions Rules (1956) to the Returning Officer, New Delhi constituency which was duly published in the Govt. of India Gazette Extraordinary Part II of 21st Feb. 1957 and as such the contest was amongst the four candidates only. The polling took place in the said constituency on the 3rd of March, 1957 and Smt. Sucheta Kriplani, respondent No. 1, was elected to the House of People on 5.3.57 securing the highest number of votes, namely 76,549. The other candidates obtained the following number of votes:—

1. Maharani Gurcharan Kaur—3,771.
2. Shri C. P. Aggarwal—877.
3. Shri Balraj Madhok—22,726.

out of a total vote of 1,04,461 actually polled.

4. Now the petitioner has challenged the election of the Respondent upon the allegations relating to certain corrupt practices alleged to have been committed by the respondent or his election agent or by any other person with the consent of a returned candidate or election agent or in the interests of the respondent and the same may be catalogued as follows:—

- (a) That the respondent her agents and other persons with the connivance and consent of the Respondent or her Election Agent published statement in Urdu Daily Newspaper 'Milap' and orally through the agents or canvassers of facts, which were false and which they believed to be false or did not believe to be true in relation to the alleged withdrawal or retirement from contest of petitioner, being a statement reasonably calculated to prejudice the prospects of the Petitioner's election.
- (b) That the Congress started vigorous propaganda in favour of the respondent in Delhi, so much so that the Election campaign was started by the Delhi State Congress Committee in the Month of February, 1957 and Shri Jawahar Lal Nehru, Prime Minister of India addressed a mammoth meeting of the citizens of Delhi at the Ramlila Grounds, Delhi, in favour of the Respondent and other congress candidates. That Shri Jawahar Lal Nehru who wields a stupendous power in India both as Prime Minister and acknowledged Congress Leader, sent for Smt. Manmohini Sehgal on the evening of Tuesday, the 12th February, 1957 at his residence through General Secretary of the Congress Party and exercised undue influence, with the consent of the Respondent or in her

- interest on her (Mrs. Manmohini Sehgal). This undue influence took the form of coercing Mrs. Manmohini Sehgal to retire from the contest.
- (c) That the Respondent through her agents and other persons interested in her success, issued a false statement in a daily news paper 'Milap' of New Delhi, and crally throughout the Constituency that the (Mrs. Sucheta Kriplani) was going to be a Minister in the forth-coming Union Cabinet and that she would be allocated the portfolio of Rehabilitation and that the Congress High Command has approved of it. This statement of facts was false to the knowledge of the Respondent and her agents and which they either believed to be false or did not believe to be true, and this statement was reasonably calculated to prejudice the prospects of the election of the Petitioner inasmuch as thousands of refugees who had promised full support to the petitioner went over to the Respondent and presented her (the respondent) purses containing money.
- (d) That the respondent either herself or by her Election Agents did not keep correct accounts of all the expenditure in connection with the Election incurred or authorised by her or by her election agents between the date of publication of the Notification calling the election and the date of declaration of the result thereof i.e. 5th March, 1957. That the total expenditure incurred by the Respondent exceeds the amount prescribed for the New Delhi Parliamentary constituency.

The particulars of the alleged corrupt practices enumerated in clauses (a), (b), (c), and (d) above were also explained in the annexures A. B. C. D. attached with the petition and it was submitted that the same were to be read as part of the Petition.

5. Besides the aforesaid corrupt practices, it was also stated that a large number of unauthorised ballot papers were found with the Congress Party of which the Respondent was a nominee a few days before the General Election and were being distributed to the congress workers. It was alleged *inter-alia* that this matter was brought to the notice of the Election Commission and some unauthorised Ballot Papers were also handed over to the Election Commission Officer but he sought to take refuge on the plea that those ballot papers were of the last General Election of 1951, and the same had been destroyed. Lastly it was asserted by the Petitioner that these corrupt practices had materially affected the result of the Election and that the election has not been a fair one. In paragraph 11 of the Petition, it was stated that the corrupt practices, irregularities and illegalities mentioned above had deprived the petitioner of a very large number of votes which she would have secured but for the said corrupt practices. In the closing paragraphs of the Petition, the original Petitioner, Maharani Gurcharan Kaur, narrated some more facts to show that she had immense influence in the New Delhi Parliamentary constituency and would have obtained large number of votes but for the corrupt practices given above.

6. It may be stated at the outset that Shri Amir Chand adopted the contents of the same petition filed by Maharani Gurcharan Kaur on substitution of his name as a petitioner and the case proceeded on the averments made by the original petitioner. The petition was resisted by the respondent and in the written statement filed by the respondent some preliminary objections were also raised to the effect that the petition did not give full particulars of the alleged corrupt practices and as such the petition was liable to be dismissed *in-limine*. On merits, the contents of Paras 8 and 9, in which the corrupt practices were disclosed were categorically denied. It was asserted that the respondent was not aware of any corrupt practice having been committed in relation to her election and that no corrupt practice was ever committed by the Respondent or by her agent or by any person with the consent of the Respondent. In reply to the specific charge of clause (a) para 9, it was submitted that the Respondent, her agents or any other person with the connivance or consent of the respondent or her election agent did not publish any statement in any newspaper which contained any false statement of facts in relation to the withdrawal or retirement from contest of Smt. Gurcharan Kaur. It was denied that the statement was made by any person believing the same to be false. It was further denied that the aforesaid statement was calculated to prejudice the election prospects of Maharani Gurcharan Kaur. Similarly, in reply to clause (b) of para 9 of the petition, it was denied that Shri Jawahar Lal Nehru, either as Congress Leader or as Prime Minister, exercised undue influence on Smt. Manmohini Sehgal. It was further denied that any undue influence was exercised on Mrs. Sehgal with the consent of the Respondent or in the interest of the Respondent or

otherwise. Of course, it was admitted that the Congress party carried on vigorous propaganda in favour of congress candidates but it was denied that Shri Jawahar Lal Nehru had sent for Mrs. Sehgal at his residence and coerced Mrs. Sehgal to retire from the contest. It was submitted that the Respondent, Smt. Sucheta Kriplani had on a previous occasion successfully opposed Mrs. Sehgal in a direct contest when Mrs. Sehgal was the official congress candidate in the election of 1952; and that the respondent had no fear at all of contest with Mrs. Sehgal. In reply to clause (c) of para 9, it was vehemently denied that the respondent had ever reported to Milap that she was going to be the Rehabilitation Minister in the forth-coming Union Cabinet. It was also denied that the respondent through her agents or any other person interested in her success, or otherwise, issued any such false statement. In reply to clause (d) of para. 9, it was submitted that the allegations were vague, irrelevant and absolutely incorrect and that she had not exceeded the prescribed limit of expenditure in any manner and had kept correct accounts of all the expenditure incurred and authorised by her in connection with the election. The averments made by the petitioner in the concluding paragraph of the petition with regard to the prospective success of the Petitioner, Maharani Gurcharan Kaur, were repudiated in the written statement and it was maintained that the petition was devoid of any force and the petitioner was not entitled to any relief. Separate replies were also brought on the record to the detailed allegations made in the annexures A, B, C & D. relied upon by the petitioner.

7. The preliminary objections raised by the respondent in regard to the vagueness and deficiency of particulars were taken up in the first instance by the then Member of the Tribunal and the following preliminary issues were framed:—

1. Is the petition defective inasmuch as it does not give full particulars of corrupt practices, illegalities and irregularities alleged in the petition?
2. If so, to what extent can the petition proceed to trial?

The Tribunal while disposing of these issues by its order dated 19.10.57 also admitted an amendment application by the Petitioner, Shri Amir Chand, made under Order 6, rule 17 C.P.C. read with Section 90(5) of the R.P. Act; and on the appreciation of the arguments advanced by both sides on the points of amendment made another order dated 7.12.57. Both these orders of 19.10.57 and 7.12.57 shall form a part of this judgment and shall be appended as appendix A.

8. The pleadings gave rise to the following issues:—

- (1) Is the election of the respondent void inasmuch as corrupt practices mentioned in para. 9 of the petition read with the annexures were committed by her or with her consent or with the consent of her election agent or in her interest?
- (2) If corrupt practices were committed by persons in the interest of the respondent, did their commission materially affect the result of the election?
- (3) Were a large number of unauthorised ballot papers found with the Congress party of which the respondent was a member, a few days before the general elections and were they distributed to the congress workers? Which rule was thereby broken and was the election materially affected by the alleged breach?
- (4) Does not the petition disclose any cause of action.

FINDINGS

Issue No. 1 was framed on the basis of para. 9 of the petition is comprehensive one and contains particulars relating to different corrupt practices as specified in clauses (a), (b), (c) and (d). For the purpose of elucidation of issue No. 1, it may be stated that clause (a) relates to the news published in 'Milap' in relation to the retirement of Maharani Gurcharan Kaur from the contest. Clause (b) para. (9) deals with a different matter namely that undue influence was exercised on Mrs. Sehgal by Shri Jawaharlal Nehru with the consent of the respondent or in her interest to retire from the contest. Clause (c) of para. (9) deals with an alleged false statement published in daily newspaper Milap to the effect that the respondent Smt. Sucheta Kriplani was going to be taken as Rehabilitation Minister in the forth-coming Union Cabinet after the election. Clause (d) para. 9 deals with an alleged corrupt practice in relation to the return of expenses and that the expenditure had exceeded the amount of prescribed for the New Delhi Parliamentary constituency.

The aforesaid corrupt practices referred to in four parts of para. 9 are obviously distinct and separate corrupt practices alleged to have been indulged and committed u/s 123 of R.P. Act and in the course of discussion shall be dealt with separately for the determination of issue No. (1) not as a single unit but in its different parts as adumbrated above.

10 Shri V. P. Joshi learned counsel for the Petitioner before dilating upon the issues, referred at the outset to part (b) of Section 100 of the R.P. Act and submitted that his case was that the alleged corrupt practices were indulged and committed with the consent of the Respondent or her agent and as such the Respondent incurred the penalty as contemplated under Sec. 123 read with Sec. 100(b) of the R.P. Act, and the election of the Respondent was void and liable to be set aside.

11. The learned counsel in his opening address, while giving material facts, made particular reference to paras. 4 and 7 and 8 of the Petition wherein Maharani Gurcharan Kaur had stated her own case and prospects of her success in election. Coming to the main charges in relation to the alleged corrupt practices as set out in paragraph 9 of the petition, it was argued that the first part of paragraph 9 relates to the role played by Shri Ranbir in the days of elections by making speeches in meetings held on behalf of congress party, writing editorials in support of the Respondent and publishing news about the retirement of Maharani Gurcharan Kaur and on the following day by publishing a contradiction with regard to that news. The argument was stressed that the heading of the news is significant and moreover the news appeared on the front page of Milap on 2.3.57. The source of the news was of course not mentioned, neither on the heading nor at the close of the news but Maharani Gurcharan Kaur (P.W.27) in her statement has denied having made any decision of retirement from the contest and as such the news was palpably false and was published only one day before the polling at a crucial time. The learned counsel referred to the statement of Maharani Gurcharan Kaur and read out certain portions wherein she has stated that she had not retired and had sent telegrams to that effect to the Editor of Milap and President of India; and that she had taken out a procession on the same day repudiating the news but the mischief had already been done. It was vehemently contended that the liability for publishing this false news was fastened on the Editor, Shri Ranbir and reference was made to his statement where he had stated.

"Legally, he is responsible for any incorrect news or whatever is printed in the paper as chief Editor."

The counsel emphasised that Shri Ranbir was more anxious about the success of the respondent as revealed by his activities during the days of election and his denial that he had read the news in the morning paper and that he did not know anything before its publication is misleading and elusive. The argument precisely was that Shri Ranbir has been working throughout the election as a congress worker and had been addressing meetings on behalf of the Delhi Pradesh Congress Committee which was interested in the success of all candidates and as such he must have been alert to all news regarding retirement of a candidate. It was concluded that Shri Ranbir in consideration of all those facts and circumstances was a congress worker and is deemed to have acted as an agent of the Respondent.

12 Coming to the legal aspect of the question, learned counsel for the Petitioner vehemently contended that agency in the election law has no analogy with the contract law. It has its own independent significance in the election as enunciated in the English decisions which have been adopted by India in introducing the election law. Reliance was placed on Doabias Cases Volume II in the matter of 'Mattu Ram Chaudhri vs. Lal Chand', page 246 where it is stated that for the purpose of agency, inference can be taken from the evidence and the facts and circumstances of each particular case. Reference was also made to Doabia Election Cases Volume I in the matter of 'Hoossain Bhoys vs. Ahmed Abraham Haroon Jaffar', page 225, wherein it was held at page 230-231 that agent can be a defacto agent who was working for the canvassing of the candidate to his or her knowledge provided that the candidate or his authorised agent has reasonable knowledge that these persons were acting with their consent. Another decision cited at the bar by the petitioner's counsel is E.L.R. Vol. III (1953) in the matter of T. C. Bassapa Vs. T. Nagappa page 197. In this case particular reference was made to the definition of agent wherein it was held that no declaration or authorization in writing is necessary and the fact of agency may be established from the circumstances arising out of the general features of the case. Lastly, reliance was placed on AIR, 1957, NUC 5800, a decision of Election Tribunal, Ernakulam in the matter of Mathew Mathai Menjaram vs. K. C. Abraham referring of para. 2 of head note K. of the decision at page 5801 which is reproduced below:—

"There may, on the other hand be a political association advocating the views, of a candidate, of which that candidate is not a member, to the funds of which he does not subscribe, and with which he personally is not ostensibly connected, but at the same time in intimate relationship with his agent, utilised by them for the purpose of carrying out his election, interchanging communication and information with his agents respecting the canvassing of voters and the conduct of the election and largely contributing to the result.

To say that the candidate is not responsible for any corrupt acts done by an active member of such an association would be repealing the Act, and sanctioning a most effective system of corruption."

13. It was next argued that the respondent as a Congress nominee and all members of the congress body, however large the number may be, were working in the prosecution and in the interest of the candidate set up by the congress and all those workers will be treated as agents under the law of agency. It was emphasised that the very system of the political organizations endorsed this view that they are responsible for the acts of its officers. Reliance was placed on a decision given in petition No. 9/1955, Andhra Election Tribunal, in the matter of 'Suraj Narain of Raj Kundhary'. In this case, the Tribunal observed at page 166 that the Provincial Committee was the agent of the candidate. Reference was also made to another decision in election petition No. 346/57 'Narain vs. Raju Ram' and it was argued that in the light of the dictum laid down in that case, a candidate cannot disown as to why certain act was done.

14. Adverting to the question of consent which forms a part of agency as enunciated in explanation to Section 123 of R.P. Act, the argument of Shri Joshi was that it can be inferred from circumstances and conduct of the parties and as such the petitioner has complied with the dictates of the explanation to Section 123 of R.P. Act where agency has been defined. The argument was further reinforced that when Shri Ranbir was acting in the promotion of the election of Shrimati Sucheta Kriplani and she had the knowledge of the activities of Shri Ranbir, no specific authority was necessary in the matter of 'consent' and it was amply proved by the facts and circumstances that the activities of Ranbir were endorsed by the respondent. Finally the counsel referred to Section 100 of R.P. Act and submitted that sub-section (2) was not an exception but it was rather to be seen if any agent was guilty and then the onus will shift to the respondent to prove that the result of the election was not materially affected.

The learned counsel concluded that it was amply proved by the evidence led on behalf of the petitioner that Ranbir had acted as a canvassing agent and gave publicity to the false news about the retirement of Maharani Gurcharan Kaur in his paper and as such he was guilty of corrupt practice.

15. While dilating on the evidence adduced, Shri Joshi referred to the statements of P.W. 1, P.W. 2, P.W. 3, P.W. 4, P.W. 6, P.W. 7, P.W. 8, P.W. 9, P.W. 10, P.W. 23 and P.W. 24. It was submitted that Narain Dass (P.W. 1), Munshi Ram (P.W. 2) and Ram Lal (P.W. 3) reside in Paharganj and they definitely state that Ranbir visited Paharganj for the purpose of canvassing. Shri Ram Lal (P.W. 3) refers to the meeting at the house of Bhag Mal Tandon and states that he was introduced to Ranbir in that meeting. P.W. 6 Manmohan, P.W. 7 Mangat Ram, P.W. 8 Hari Ram and P.W. 10 Om Parkash depose about the meeting at Purana Qila, which was addressed by Shri Ranbir. These witnesses have also stated that the respondent went round the locality with Ranbir for canvassing purpose. Reference was made to the statement of Bhawani Dass (P.W. 23) also who had deposed that he had known Ranbir since long and he used to address public meeting in the presence of the respondent. Similarly Mangal Dass (P.W. 4) also deposed about the meeting held at Purana Qila where Ranbir spoke for more than an hour. On the strength of this evidence, Mr. Joshi urged that it was sufficiently established by this evidence that Ranbir was moving about with the respondent and was canvassing for her and his own statement is not believable for the simple reason because he had become conscious at the time of giving evidence that he could be arraigned for having indulged in corrupt practice. Reference was also made to the evidence of Sagar Chand Jain (D.W. 11) and Shri K. Shankara (D.W. 15) and it was pointed out that these defence witnesses have also stated that Ranbir was working for the Congress. The learned counsel for the petitioner while replying to the arguments of the respondent's counsel once again dwelt upon the activities of Ranbir and strenuously urged that Shri Ranbir was writing editorials, giving publicity to the news, was canvassing as deposed by a large number of witnesses

produced on behalf of the petitioner and these activities on his part furnish sufficient data to infer that he was acting as a canvassing agent of Shrimati Sucheta Kriplani. The legal aspect in reply was further stressed that the election agent and polling agent are specifically mentioned in the explanation to Section 123 of R.P. Act. This indicates that they require authority in writing because election agent is representative of the candidate and so far the polling agent is concerned he has certain specified duties to perform within the polling station. According to the law of agency, the counsel proceeded, although the duties of the polling agent are defined still if he commits any corrupt practice, he can be hauled up. The argument precisely was that the connotation of the definition of agent and the conception of the word "agent" in the election law is very very wide, and whatever the decisions in English or India may have been arrived at in various petitions, they only work as a guide and each case depends upon its particular merits and it is for the Tribunal to hold who is an agent. On the point of consent, the learned counsel only reiterated that the specific consent of the respondent was not necessary and it can be inferred from the facts and circumstances. The view was not supported by any authority in reply as well.

16. Applying this proposition of the agency and the consent on the facts of this case adumbrated above, Shri Joshi learned counsel for the petitioner concluded that the elements of Section 123(4) of R.P. Act have been amply proved inasmuch as the publication of the news is admitted and the falsity of the news does not require more proof because the same was contradicted with regret by Shri Ranbir, Editor of Milap on the following day in his paper. That the news admittedly relate to retirement and the only other ingredient of the corrupt practice namely that it was calculated to prejudice the election is to be looked into, in the light and the circumstances of the case. Learned counsel in this connection urged that it was for the Tribunal to come to a calculation whether this news has done any harm.

17. Shri Ranjit Singh Nirula arguing on behalf of the respondent before embarking upon the reply to this part 9(a) of the issue No. 1, submitted that the allegation in connection with para 9(a) as set out in the petition read with annexure (A) stands dwindled and circumscribed by the Tribunal's orders dated 19th October 1957 and 7th December 1957 wherein it was specifically mentioned that the scope of the enquiry in the course of the trial would be to the part played by Ranbir with the consent and connivance of the respondent or election agent and as such the evidence led to involve or rope in the respondent herself or her election agent would be either inadmissible or should not be read as a part of the evidence. Shri Joshi in reply to this preliminary objection submitted that the amendments sought to be made in the particulars were rejected by order dated 7th December 1957 and the particulars as given under any of the paragraphs 9(a), 9(b), 9(c) and 9(d) with annexures were held sufficient upon which a comprehensive issue was framed. The counsel moreover contended that the Tribunal at that early stage could not give any final order as sought to be interpreted by Shri Nirula. Be that as it may, suffice to say that the order of 19th December 1957 read with the order dated 7th December 1957 was for the purpose of admissibility of evidence as to whether respondent or the election agent had contributed to the publication of the news and other corrupt practices. This does not mean, to my mind, that the allegations as originally set out and which forms a part of the issue in comprehensive form, exonerates the respondent altogether from the liability if the petitioner adduces evidence to prove that the alleged corrupt practice attributed to Ranbir was with the consent of the respondent or her election agent or any other person working under their consent. In other words Section 123(4) of R.P. Act stands as it is for the purpose of proof and any part of it cannot be eliminated at the outset by certain observations by the then Member of the Tribunal for the purpose of elucidation with regard to the admissibility of the evidence.

18. Shri Nirula learned counsel for the respondent split up the first issue into four parts and argued taking each category separately—

- (1) Was Ranbir a canvasser and agent of the respondent?
- (2) If so, did Ranbir as such published a news in Milap dated 2nd March 1957 (Ex. P.C.)?
- (3) Was the news false?
- (4) If items No. 1 to 3 are proved, did Ranbir at the time of publication i.e., issue of the paper believed the news to be true?

Referring to item No. 1 above, the learned counsel split up this item into three parts:—

- (i) Whether he was canvassing among the voters for the respondent and going about in the illaqa?
- (ii) Whether he was attending meetings and making speeches?
- (iii) By writing editorials and supporting the election of the respondent.

In regard to (i) above the counsel referred to the evidence of P.W. 9 Narain Dass who has stated that Shri Ranbir visited several times his premises during the election to canvass for the respondent. The counsel contended that the witness should not be believed because he is interested in Amir Chand and has appeared in court as a witness on the asking of Amir Chand. He is moreover contradicted by Ranbir and the respondent and other D.Ws. That P.W. 2 Munshi Ram is also interested in Amir Chand and Jan Sangh. P.W. 3 Ram Lal is interested because he says that he has been working free for Maharani Gurcharan Kaur and that he was the counting agent of the Maharani. This witness voluntarily told Amir Chand that he knew about the meeting at the house of Bhag Mal Tandon when he came to know that Amir Chand was going to be the substituted petitioner. That the statement of Balraj Madhok (P.W. 4) is vague in regard to the canvassing by Ranbir. He was moreover a Jan Sangh candidate and Jan Sangh is prosecuting this petition. He admits that the petitioner is also a member of Jan Sangh and had worked for him during the election. Similarly, Madan Mohan (P.W. 5) is a supporter of Jan Sangh. He says that 1 or 2 days after the visit of Ranbir, he informed the petitioner. It is ridiculous and not believable as the petitioner was not in the picture at that time. Mangat Ram (P.W. 7) was in charge of Jan Sangh election in Purana Qila. He went to meet the petitioner after reading about the election petition and volunteered to give evidence. P.W. 8 Hari Ram is also interested when he says that he met the petitioner in Chandni Chawk and volunteered to give evidence. P.W. 10 (Om Parkash) and P.W. 23 (Bhawani Dass) do not refer to Ranbir's canvassing in Purana Qila locality after addressing the meeting. Bhawani Dass refers to canvassing in Paharganj. He however admits that disciplinary action was taken against him by the Congress. On the top of it, Maharani Gurcharan Kaur herself has not stated a word about this allegation in her sworn testimony that Ranbir took rounds for canvassing for Sucheta Kriplani at Purana Qila.

19. It was next argued that DWs, 1, 2, 4, 7, D.W. 10 and D.W. 12 repudiate this assertion about canvassing by Ranbir and D.W. 18 Daljit Singh, President of United Press of India who is expected to know about the movements of the editors definitely contradicts it.

Coming to part (ii) i.e. about Ranbir's attending meetings and making speeches, the counsel argued that two meetings, one of Paharganj and the other of Purana Qila, are alleged to have been attended by Ranbir. So far as the meeting in Paharganj is concerned, it is stated by P.W. 3 that Ranbir attended and spoke in it and Kartar Singh Sokhi was also present. Ranbir and Sokhi both deny this. P.W. 3 is not corroborated by any other witness and there has been no report of the meeting published in any paper. This clearly negatives the allegation. So far as the Purana Qila meeting is concerned, that is of course admitted.

20. In regard to part (iii) about writing editorials and supporting the election of the respondent, the counsel submitted that three articles are alleged to have been written by Ranbir in his paper Milap. First article was published in Milap dated 2nd March 1958 marked Ex P.C. at page 6 styled 'Delhi ke pursharthion ki sewa men'. This article is a general article and deals with each candidate and it is not a thesis for the respondent. It was in favour of Congress against Jan Sangh and other candidate. Second article was published in Milap dated 27th February 1957 page 4 'Delhi ka chunav'. The counsel urged that the article is pro-Congress. It deals with the policy of the Congress their achievements and the policy of the Indian Government. It is of general character and deals with all the Congress candidates. The third article appeared in Milap dated 15th February 1957 styled 'Akal ki bat'. It deals with the appreciation of the withdrawal of Mrs. Manmohini Sehgal. This article is also of general nature and deals with all the candidates.

21. Adverting to the legal aspect of the question as to the definition of agency, reliance was placed on a decision of an Election Tribunal Sambalpur (Orissa) in the matter of Ghansham Dass Thirani vs. Partap Keshev Deo and others published in Gazette of India dated 28th April 1958. It was argued that in the old R.P. Act of 1951, the word "agent" was defined in section 79 as to include an election agent,

a polling agent and a counting agent and any person who on the trial of an election petition or of an offence with respect to any election was held to have acted as an agent in connection with the election with the knowledge or consent of the candidate. That the old definition has now been amended to the effect that 'counting agent' have been excluded and persons acting only with the knowledge of the candidate but without his consent have also been excluded in the amending act of 1956. The learned counsel proceeded that section 100(2) (b) of the old Act which corresponds to section 100(1) (b) of the new Act has also been materially amended. Under the old Act, any corrupt practice specified in section 123 committed by a returned candidate or his agent or by any other person with the connivance of the returned candidate or his agent was to make the election void. The new provision is that such a corrupt practice to make the election void would have to be committed by the candidate or his election agent. Here for the word "agent" in the old law, "election agent" has been replaced and for the word connivance also the word "consent" has been substituted. It is, therefore, clear that the legislature intended to exclude other agents excepting the election agents, from the mischief of the old corresponding section 100(2) (b). They also intended that mere connivance of the candidate would not be sufficient to make him responsible for corrupt practice by a third person and that the consent of the candidate was necessary. The learned counsel concluded that by the new definition of 'agency' in Section 123 of R.P. Act, it is clear that one must have to act as an agent with the consent of the candidate and section 100(1) (b) further makes it clear that even though a person is an agent of the candidate (excepting election agent) corrupt practice committed by him cannot automatically come under the mischief of that sub-section unless that corrupt practice has been committed by such agent with the consent of the candidate.

22. Lastly, it was argued that publication of articles in a newspaper in respect of the candidate a party or who had set up a candidate or against rival party does not make the publisher and printer of a paper an agent of the candidate. In support of this following legal precedents were relied upon:—

1. A judgment of 3 member Tribunal reported in 8, E.L.R. page 265, Shiv Dass vs. Shelkh Mohd Abdul Samad wherein it was held as follows:—

"Where a newspaper, started to support Congress candidates and which was published for 38 days, contained statement to the effect that J.S. a rival candidate set up by the Jan Sangh party would withdraw in favour of the respondent who was a Congress candidate. . . . Held, that on the facts of the case the editor and publisher could not be held to be agents of the respondent."

2. Bihar and Orissa case reported in Sen & Poddar Indian election cases, page 129 in which it is held that editorials in any paper in the interest of a candidate does not make the editor liable.

3. 10 E.L.R. page 376 a decision of Election Tribunal Madras in Mathal Mathew vs. K. C. Abraham corresponding to 1957 N.U.C. 5800 also relied upon by the counsel for the petitioner.

23. Coming to the definition of 'consent', the learned counsel for the respondent urged that there is not an iota of evidence that the respondent gave her consent and there is no such circumstance by which any consent implied or express can be inferred. The question of consent after publication does not arise in view of the definition given in the amended act and even then there is no ratification given by the respondent except as stated in the statement of Shri Amir Chand Petitioner. The respondent however denied categorically that part of petitioner's statement.

24. Shri Nirula learned counsel for the respondent dilating on other parts of issue No. 1, namely as to whether Ranbir published the news in Milap and as to whether the news was false and even if it was false whether Ranbir knew it at the time of the publication to be false or did not believe it to be true, submitted that there was no evidence brought on the record as to what hand Shri Ranbir had in the publication of the news. Similarly, no evidence was led in respect of the falsity of the news. The learned counsel urged that in the light of the deposition of Maharani Gurcharan Kaur to the effect that her chief worker Shri Gurcharan Singh was dissatisfied and the Gurcharan Singh had met Mrs. Sucheta Kriplani and had talked about the retirement of Maharani from the contest, clearly indicates that there was some truth in the news and some decision was going to take place but it did not materialize. Accordingly, the news cannot be said to be absolutely false. The argument was further stressed that the news in view of the slackening activities

of Maharani Gurcharan Kaur could not be said to be astounding because her camps had come to close. On the question of consent, reference was made to the definition of consent given in Wharton's Law Lexicon, 14th edition at page 235 which reads as follows:—

“Consent is an act of reason accompanied by deliberations, the mind weighing, as in a balance, the good or evil on either side. Consent supposes three things—a physical power, a mental power, and a free and serious of them.”

Reference was made to the Law Lexicon by Rama Nath Ayer also in which the definition given is almost the same.

It was argued that one cannot consent to a thing unless one has knowledge of it. In the absence of any evidence that Shrimati Sucheta Kriplani had knowledge of the news before its publication, it could not be said that the publication was made even with her implied consent, if not express. Lastly, the learned counsel submitted that the statement published must be a statement reasonably calculated to prejudice the prospects of Maharani's election. It was argued that calculations have no meaning if it is to be judged with respect to any thing that happened after the event. Calculation must precede the event. There is not an iota of evidence that there was any calculation either by Ranbir or any body to give this news in a calculated manner. The argument exactly was that nobody could have calculated to harm Maharani Gurcharan Kaur who got only a few thousand votes. Some evidence of conspiracy should be there in order to prove that it was reasonably calculated that the publication of this news of retirement could harm the candidate. The counsel concluded that this necessary ingredient of Section 123(4) stands unproved altogether in this case.

25. Arguing as to whether the result of the election was materially affected, the counsel submitted that the material effect must be on the result of the election concerning the returned candidate. In this case, there is a margin of about 70,000 votes and it is not conceivable as to how the election of the returned candidate could have been materially affected by the news of retirement of Maharani Gurcharan Kaur who had in point of fact no prospects of success at all.

26. Now on the appreciation of the arguments of the learned counsel and judged in the light of the principles of law enunciated with regard to the law of agency in the election law and the definition of consent used in the explanation to Section 123 of R.P. Act, it is necessary to refer to Section 123(4) of R.P. Act which reads as follows:—

“The publication by a candidate or his agent or by any other person, of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature, or withdrawal, or retirement from contest, of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election.

It will be seen that the necessary facts to be established before the Provision of Section 123(4) are attracted are these—

1. That the publication must be by a candidate or by his agent or by any person with the consent of the candidate or the election agent.
2. It must be of any statement of fact which is false or which is believed to be false or which is not believed to be true.
3. The statement is reasonably to be calculated to prejudice the prospects of that candidate's election.

In other words if these ingredients are established the publication will be corrupt practice as defined u/s 123(4) of R.P. Act. There is however an explanation attached to the Section 123 of R.P. Act and that may also be reproduced as follows:—

“In this the expression agent includes an election agent, polling agent and any person who is held to have acted as an agent in connection with the election with the consent of the candidate.”

Now reading both at the same time, it follows that Section 123(4) of R.P. Act makes a publication by a candidate or his agent or by any other person a corrupt practice; and the word agent in clause 4 of Section 123 of R.P. Act shall have to be construed within the ambit of the definition given in the explanation.

Accordingly if the publication has been made by any person acting as an agent in connection with the election with the consent of the candidate, it will be regarded as a publication by the agent of the candidate for the purpose of this section although he may not be an election agent or a polling agent. In this perspective in order to constitute the agency u/s 123 of R.P. Act, it would, therefore, be essential that the person must be proved to have acted as an agent in connection with the election with the consent of the candidate. For the purpose of proper understanding, I think Section 100(1)(b) of R.P. Act which has direct bearing may also be reproduced as follows:—

“Subject to the provisions of sub-section 2 if the Tribunal is of opinion

- (b) that any corrupt practice has been committed by the returned candidate or election agent or by any other person with the consent of the returned candidate or with the election agent then the Tribunal shall declare the election of the returned candidate to be void.”

Now again putting Sections 100 and 123 of R.P. Act together it appears that if a person acts in connection with election as an agent with the consent of the candidate he will be deemed to be an agent for the purpose of section 123; and the result will be that any publication done by such a person will constitute a corrupt practice. But before the petitioner could get any relief u/s 100, he has not only to prove that a corrupt practice has been committed by any person but it has been done with the consent of the returned candidate.

27. Judged in the light of the above enunciation of the legal aspect, it is to be seen whether the materials brought on the record establish the consent, implied or express, of the respondent. The authorities cited for and against reveal that consent is a question of fact which will have to be established by the petitioner before he gets relief u/s 100 of the R.P. Act. The authority relied upon by Shri Joshi, learned counsel for the petitioner relates to decisions arrived at in the pervuew of old Act of 1951 when the words “knowledge” and “connivance” also formed a part of the section which have, by the amendment of 1956 been deleted from the Section. In the circumstances, the knowledge of the contents of the publication is no ground for assuming knowledge and similarly even if it has been proved that the respondent had the knowledge of the contents subsequent to the publication, no duty is cast on the respondent to go and publish some refutation of the allegations contained in the publication. The consent accordingly so as to make the act of the third party as the act of the candidate should be in respect of the act of the third party and sheer knowledge would not be sufficient. Consequently, even if it is proved that any person was acting as an agent, it is further to be proved that he was doing so with the consent of the respondent. This is correct as urged by Shri Joshi learned counsel for the petitioner that the law of agency in election cases has been held to go much further than ordinary law of contract. Various attempted definitions have been given of it but each case must stand on its own ground and the court must see that the relation of the person charged is from the facts of the case capable of being expressed by positive evidence. The main argument on the basis of Doabia Election Cases Vol. II that the law of Agency in election has long been held in England to go much further than the ordinary law of principal and agent that a candidate is responsible generally for the actions of those who to his knowledge for the purpose of promoting any election, do such other things as may tend to promote his election provided that the candidate, or his authorised agent has reasonable knowledge that these persons were acting with that object. This argument clearly deals with knowledge which has been differentiated from consent and has been deleted in the amended definition. Shri Joshi in the written notes also adverted the attention of the Tribunal to Halsary Law of England, Edition II, paragraph 501 volume II, page 245 wherein it is stated that candidate's liability under the parliamentary common law depends upon a peculiar principle subject to this matter and distinct from the principles prevailing in criminal or civil law of agency. And that candidate's liability under this principle may extend to the acts of other person who is *de facto* member of the staff which is conducting election and whose services are directly or indirectly recognized or made use by the candidate or his election agent whether such person be paid or unpaid. Reference was also made to the law of Parliamentary Election and Election Petition by Huge Frazer III Edition, page 73 wherein it is laid down:—

“That putting it into a very simple form but with regard to election law, the matter goes a great deal further because a number of persons are employed for the purpose of promoting an election who are not only not authorised to do corrupt acts and who are expressly enjoined to abstain from doing them notwithstanding if a man let a number of people to go about canvassing for him, to issue placards, to form a

committee for his election and to do things of that sort, he must to use a colloquial expression take the bad with the good."

This quotation was also referred to in the case of *T. C. Bissapa vs. T. Naggapa* reported in 3 E.L.R. page 197 relied upon by Shri Joshi and it was again adopted and approved in a decision of Election Tribunal Assam in the matter of *Hira Lal Dass vs. Biswanath of Upadhyaya*, published in Gazette of India of 4th December, 1957. But the decision in *Hira Lal Dass vs. Biswanath* was set aside by the High Court Assam in appeal and the definition of Agent, on the point of sheer knowledge was not accepted. The judgment in appeal No. 53/57 is published in Gazette of India of 13th June, 1958 and can be read with advantage on the question of agency. The above expressions of the English law moreover clearly circumscribe the circumstances also under which any person works to promote the election of a candidate. On the contrary, the study of the question reveals that Willes J in *Windsor 10 MR&3* had remarked that

"A mere canvasser for the candidate is not the agent of the candidate unless he had the authority to canvass."

Similarly in the case of *Londonery 10 M & H*, page 276, (at page 278), O'Brien J remarked that he could not concur that any supporter of a candidate who chooses to ask others for their votes and make speeches in their favour can force upon the candidate as an agent." In the case of *Taunton, Grove J*, observed as follows:--

"To establish agency, for which the candidate would be responsible he must be proved by himself or by his authorised agent to have employed the person whose conduct is impugned to act on his behalf or to have to some extent put himself in their hands or to have made common cause with them for the purpose of his election. To what extent such relation may be sufficient to fix the candidate must do seems to me a question of degree and evidence to be judged by the election petition Tribunal."

He further remarked in the same case that

"that mere non-interference with persons whose feeling interested in the success of the candidate may act in respect of his canvassing is not sufficient to fasten the candidate with any unlawful acts of theirs".

At any rate, the case of *Mathai Mathew Man-Juran vs. K. C. Abraham*, an Indian decision of Madras Tribunal reported in 10, E.L.R., 376 can be treated as a good authority because this case was relied upon by both sides. Shri Joshi learned counsel for the petition in the first instance relied on the certain observations made in this case and Shri Nirula learned counsel for the respondent in reply also relied upon this case and maintained that the dictum laid down in that case may well be applied on the facts of the present case. Now in this case *Mathai vs. Abraham*, of the Madras Tribunal, it was held that where the managing director of a newspaper happened to be the President of the Provincial Congress Committee and the Editor and Publisher of which was also the prominent congressman and the paper was actively canvassing for the congress through his editorials, reports, circulars and advertisements and receiving donations from the congress, these facts were not sufficient to make that newspaper or its editor an agent of the candidate put up by the congress so as to make the candidate liable for the statements made in that paper. I am conscious that the object of giving wider meaning to the word 'Agency' in Election Law is to maintain the Purity, of election. But I see no justification for giving a meaning to the word 'Agent' which will make the candidate liable for the acts of any person who may be a mere sympathiser of the candidate. Furthermore in order to foist on the respondent the responsibility of the act of an Editor, it will be essential to establish that the Editor was acting as an Agent and mere writing editorials or any such action of an Editor beneficial to a certain candidate does not make him an Agent much less when the paper is not an organ of the party whose nominee the candidate is.

28. Coming to the facts of the present case, evidently the position of Ranbir was not at par with the Managing Director and the Editor of the paper referred to in *Mathai Mathew vs. Abraham* case. To put in nutshell, the facts relating to the news published in *Milap* in respect of the retirement of Maharani Gurcharan Kaur taken at best indicates that the Chief Editor of a vernacular paper *Milap* (who admittedly addressed a meeting on behalf of the congress candidate and also wrote certain articles in respect of the candidature of congress nominees and furthermore paid glowing tributes to the achievements of Shrimati Sucheta Kriplani in the cause of refugees and her personal qualifications) allowed the news about the retirement of Maharani to be published in his paper, a day before the polling. Shri Ranbir in his sworn testimony states that he read the news

when it was published, and it was not brought to his notice before its publication by the Editor incharge working under him and that he held editor Shri Sudesh responsible when he received a telegram from Maharani repudiating the news and actually fined him as punishment for not having brought the news to his notice before its publication. He admits that legally he is responsible for whatever is published in the paper and that he lost no time to publish a contradiction on the following day showing his regrets to the publication of the news. This witness however when questioned as to the source of the news stated that it was not by a correspondent or by any staff reporter whose names are generally mentioned in the publication of the news and this news according to his information was given from the office of Maharani Gurcharan Kaur. Maharani Gurcharan Kaur on the other hand in her statement has stated that after the election, she chanced to meet Shri Ranbir and on enquiry he had apprised her that one Gurdas Mal had given the news from Rajinder Nagar on telephone but she did not believe it and hold Ranbir only responsible for the publication of the news and she did not bother to enquire as to who that Gurdas Mal was. Similarly, Shri Amir Chand petitioner examined as his own witness has stated in cross-examination as below:—

"I have no personal knowledge who gave the news about the alleged retirement of Maharani Gurcharan Kaur but I had met the Chief Reporter of Milap, Shri Balraj Khanna, who told me that one Gurdas Mal Proprietor, Liberty Hotel and Restaurant of Rajindernagar had sent a message on telephone to that effect."

Furthermore, he says

"My talk with Balraj Khanna referred to above took place after I had been substituted as petitioner. I did not make any amendment application for adding this particular."

Shri Amir Chand also stated in his deposition that he had an occasion to meet Shrimati Sucheta Kriplani on the day of polling and when he broke the news about the retirement of Maharani Gurcharan Kaur to her, she remarked

"Such things happen in election."

Shrimati Sucheta Kriplani however when questioned during her examination categorically denied that she had met Amir Chand at all or had made such remarks.

Apart from these facts and circumstances briefly narrated above, there is some oral evidence adduced by both sides with regard to the activities of Shri Ranbir. Some of the petitioner's witnesses have stated whose evidence has been discussed above in the arguments of the counsel that they had met Shri Ranbir at some places that Shri Ranbir had been moving about from door to door for the purpose of canvassing. On the other hand, the respondent's witnesses depose that in the same area from where petitioner's witnesses came forward, Ranbir was not seen at all during the days of elections. Both sides have dubbed the witnesses of the opposing side as interested and unworthy of any credence. The petitioner's counsel urged that all the witnesses of the respondent examined in this connection are congressmen and as such they depose so in partisan spirit. Similarly, respondent's counsel submitted that the witnesses of the petitioner examined in his connection either belong to Jan Sangh party or they were asked to appear on behalf of the petitioner at the instance of the Jan Sangh party of which body, the petitioner is an active member. At any rate, the oral evidence is not of much value and circumstances which speak some time more than facts clearly indicate that Ranbir did not do canvassing work from door to door. Of course, he was working for the congress and the policy of 'Milap' was pro-congress policy. The allegation of the petitioner that Ranbir after having addressed the meeting at Purana Qila along with Mrs. Sucheta Kriplani and others and her election agent moved about for canvassing, appears on the face of it to be unbelievable. There was a huge gathering in the public meeting at Purana Qila which was addressed by Shri Ranbir and it does not stand to reason that after having addressed that meeting, he had deemed it necessary to go from door to door. It is understandable that any influential person may have been asked to meet a certain leader of the locality at his private place but it is not so and the leaders of the Purana Qila locality must have been present in the meeting. This appears to be a got-up story in order to bolster up the allegation that Ranbir was enthusiastic in the matter of canvassing and was moving about from door to door. Shrimati Sucheta Kriplani has also denied and some witnesses of that locality examined on behalf of the respondent have strongly repudiated this version. Ranbir himself states that he left soon after having addressed the meeting for an hour or so. The allegation accordingly collapses to scrutiny and as such this part of the allegation

namely one of canvassing from door to door is not proved any cogent evidence and is not worthy of any trust. Assuming that some articles appeared in *Milap* in support of Sucheta Kriplani by itself cannot lead to an inference that the paper was the agent of the congress candidates. On court question, Ranbir has stated that his paper was not distributed or purchased by the congress party nor did he get any remuneration for the work and his only interest was to support the congress because according to his creed of nationalism, he thought that congress was the best party to come out successful in the elections. There is thus no evidence to show that *Milap* was financed by the congress or it was authorised to canvass in whatever manner it liked. Ranbir's activities appear to me of his individual interest as a pro-congressman. Coming to the news of retirement, I have no hesitation of course in saying that Ranbir was negligent in the matter of administration of his paper and that an important news about the retirement of a candidate was published a day before the polling without his knowledge. But as borne out by his sworn testimony and other evidence, it appears that this news either emanated from Gurdas Mal or from the office of Maharani Gurcharan Kaur herself. With regard to Gurdas Mal he was examined as a witness on behalf of the respondent and he has denied having sent the news. It is problematic as to whether he is giving the whole truth. It is just possible that the tents of Maharani Gurcharan Kaur in which her office was located at Rajinder Nagar were removed and some workers might have told Gurdas Mal and he sent the news. But there are other circumstances also which do not exclude the possibility that the news was actually released from the office of Maharani herself. She herself states in her deposition that her chief worker Gurcharan Singh was not happy in the closing days of election. This is also in evidence that there was some attempt on the part of Gurcharan Singh to approach Shrimati Sucheta Kriplani to pay a courtesy call to Maharani Gurcharan Kaur in order to preserve her dignity and that Maharani was prepared to withdraw from the contest. I have no reason to disbelieve Shrimati Sucheta Kriplani on this point that Gurcharan Singh actually approached her with this message. The evidence read as a whole also reveals that the activities of Maharani Gurcharan Kaur were slackening and her workers were not happy over the matter. In her statement, Maharani Gurcharan Kaur has frankly stated that she did not know how many offices had been set up and besides naming one or two workers, she did not know much about the work which was going on in respect of her candidature. Of course, there is some evidence on the record that she had a glamour about her being the Maharani of Nabha, an erstwhile State of Punjab, and the name of her husband was also an asset to her. She has also stated that Akali party was supporting her and Shri Gopal Singh Qaumi, one of the leaders of the refugees, was also one of her supporters. At the same time she has further stated that it was her first chance for having sought a seat for Lok Sabha or as a matter of fact in any election. She further states that she was not associated with any political party and had asked for a congress ticket in the first instance but a ticket was not given to her. She states that she did not try to enlist the support of any other political party. In this connection, Shri Balraj Madhok, petitioner's own witness, has stated that Maharani Gurcharan Kaur had approached him for Jan Sangh ticket but it was too late and the ticket could not be given to Maharani. She frankly admits that she had no affinity with any political party. Taking into consideration all these facts and circumstances, the possibility is not excluded as stated above that her workers had become panicky, and the news as sent by some one which was published in *Milap*. This news was however not published in any other paper. It appears that as '*Milap*' was working for the congress in opposition to another daily vernacular '*Pratap*' who was working against congress, this news was published in *Milap* and the English press did not take much notice. The news by itself is to the effect that it has been decided that Maharani Gurcharan Kaur would retire and not that she had actually retired and that she was going to meet Sucheta Kriplani. The currency to this news was given on some speculation and not as an accomplished fact. That however does not detract any thing so far the legal aspect is concerned because on merits as stated above, the ingredient of publication in respect of retirement is there. On the question of falsity however, as discussed above, the evidence is indecisive inasmuch as on the one hand contradiction of the news on the following day by itself makes it a false news but the circumstances go to show that basis of the news was not exactly false and in all probability it emanated from Maharani's office.

Coming to the last ingredient that the publication was reasonably calculated to prejudice the election, the argument of Shri Joshi as stated above, was that it is for the Tribunal to calculate now, whether the news which was contradicted, was calculated to prejudice the election. This argument obviously cannot be treated as a right argument. The words 'reasonably calculated' manifestly show that one who got the news published gave it with the express desire and calculation

that would improve the prospects of the respondent. Normally any retirement may go in the interest of the opposing candidate. But in this case the contest was between four persons and as rightly stated by Shrimati Sucheta Kriplani in her statement, the more the contestants were the better chance of success she had. In this perspective, it seems clear to me that the retirement of Maharani Gurcharan Kaur was not in the interest of Sucheta Kriplani. Maharani at best as claimed by her and by the evidence adduced by the petitioner, could enlist the support of sikhs and refugees. There was no political party at her back. There is evidence adduced on behalf of the respondent that the Government servants and their organizations had passed resolutions in support of Sucheta Kriplani as evidenced by the sworn testimony of K. Shankra D.W. and D.W. 1, President of the Coal Merchants Association. In regard to the sikh electorate, in the first place in a joint electorate, it is futile to argue that a certain community was with a certain person on communal basis but even giving some allowance to certain politics, it has been admitted that Akali Party and Congress had joined in an agreement to support congress candidates. The allegation of Maharani Gurcharan Kaur that Master Tara Singh was supporting her cause is not proved by any direct evidence. On the hand, posters issued by the Akali Dal, Delhi, under the signature of S. Richhpal Singh, General Secretary, speaks the other way.

29. In regard to the refugees much stress was laid on the plea that Sucheta Kriplani had alienated the sympathies of the refugees by not supporting their demand for 30 instalments for the payment of the price of Government built quarters and that she tried to placate the refugees by giving currency to another news that she was going to be the Rehabilitation Minister. That news however forms the subject of a separate issue and will be dealt with while coming to that issue. But one thing is very significant that she was presented purses and the refugee associations had passed resolutions to support her candidature some time in January or February as evidenced by the posters Ex. DW6/A and D.W. 14/A. Maharani Gurcharan Kaur's evidence regarding her work with the refugees is not direct excepting that she in her own statement has stated that Bharat Pursharthi Sabha, one of the refugee associations was on her back. She further states that it is not a registered body.

On merits accordingly, I have no hesitation to hold that the petitioner has failed to prove by any cogent and satisfactory evidence that Shri Ranbir acted as an agent of the Respondent or the news about the retirement of Maharani was published in Milap with the consent of Shrimati Sucheta Kriplani or her election agent or it was reasonably calculated to injure the election. The allegations did not fulfil the requirements of Section 123(4) read with Section 100(1)(b) of R.P. Act and I hold accordingly.

30. Coming to the another aspect of the question as to whether Ranbir acted in the interest of the respondent and as to whether the case falls within the perview of Section 100(1)(d) part II. This part (ii) reads as follows:—

“The result of the election so far it concerns the returned candidate has been materially affected.

(2) by any corrupt practice committed in the interest of the returned candidate by a person other than that candidate or his election agent or a person acting with the consent of the candidate or his election agent.”

As I read the section, it seems clear to me that the corrupt practice should be in the interest of the returned candidate if practised by any person. As observed above, to my mind, it was not in the interest of the respondent and the source of the publication was the office of Maharani or some one giving the news casually on having been informed by the worker of Maharani Gurcharan Kaur. It was not in the interest of the Respondent to have given publicity to this news because the retirement itself was not to the advantage of Shrimati Sucheta Kriplani but could prove to her detriment in order to enable the Jan Sangh candidate to secure more votes after the retirement of Maharani Gurcharan Kaur. The assertion that ‘the more the candidates in this election, the better for the respondent, a congress nominee,’ really holds good. Even as an alternate case, if the news was published in her interest, I have no hesitation in coming to the conclusion again that it had not materially affected the result of the election. The margin between the votes secured by Sucheta Kriplani and that by Maharani Gurcharan Kaur is of no less than 70,000. By no stretch of imagination, in consideration of all the facts and circumstances of the case, it could have been possible to affect the result if this news had not been given publication. The learned counsel of both sides in this connection referred to some authorities as to when it can be said that the result of the election has been materially affected. I have no mind to refer to these

precedents in the face of one of the Supreme Court authority reported in 10 ELR, 30 in *Vashisht Narain Sharma vs. Dev Chand* wherein their Lordships of the Supreme Court at page 30, have explained the expression 'result of the election has been materially affected in the following words:—

"The words "the result of the election has been materially affected" in this clause indicate that the result should not be judged by the mere increase or decrease in the total number of votes secured by the returned candidate but by proof of the fact that the votes would have been distributed in such a manner between the contesting candidates as would have brought about the defeat of the returned candidate."

The language of section 100(1)(c) of the Representation of the People Act, clearly places the burden of proving that the result of the election has been materially affected on the petitioner who impugns the validity of the election."

Their Lordships of the Supreme Court have laid down

"It is impossible to accept the *ipse dixit* of witnesses comes from one side or the other to say that all or some of the votes would have gone to one or the other on some supposed or imaginary ground. The question is one of fact and has to be proved by positive evidence. If the petitioner is unable to adduce evidence the only inescapable conclusion to which the Tribunal can come is that the burden is not discharged and that the election must stand."

In this case, I need hardly add that there is no evidence to prove that the result of the election has been materially affected.

In the result, issue (1) part (a) paragraph (9) fails and is decided against the petitioner.

31. Part (b) of para 9 of issue No. 1 is to the effect as to whether Shri Jawahar Lal Nehru exercised undue influence on Mrs. Manmohini Sehgal with the consent of the respondent or in her interest to retire from the contest.

Shri Joshi learned counsel for the petitioner in the opening address submitted that Pandit Jawahar Lal Nehru who wields tremendous influence as a Congress leader in addition to his post as Prime Minister at the instance of the candidate exercised undue influence on Manmohini Sehgal, another candidate, to retire from the contest and that this constituted a corrupt practice. It was argued that Mrs. Sehgal by this influence received an injury so much so that she was deprived of the privileges accruing from Congress association with which she was connected for the last 30 years and as such Shri Jawahar Lal Nehru interfered with the electoral right of Mrs. Sehgal directly or indirectly. The argument was stressed that the undue influence had virtually started when Mrs. Sehgal had filed her nomination paper as an independent candidate and disciplinary action was taken against her by D.P.C.C. which amounted to injury. It was next argued that Congress organization may have right to control its members by rules of discipline but the law of election does not recognize that right. The argument exactly was that action if needed should have been taken after the election but any disciplinary action taken during the election itself amounted to injury because she was threatened to be deprived of what she had achieved during her membership of the Congress.

32. On the legal aspect of the question, it was urged that there are two elements of undue influence:—

1. That the person should be capable of exercising undue influence.
2. That undue influence should operate during the elections.

It was contended that Mrs. Sehgal who is an educated lady and had been working in various spheres of service to the country, political and social, was aware of the conception of free right of vote but she surrendered her right because of the fear of certain harm. It was concluded that so far she was concerned, she could have been deprived of whatever reputation or status she had acquired because of her association with the Congress and so far her husband was concerned, she could not afford to see her husband to be harmed who was the Chairman of the Income Tax

Tribunal. Particular reference was made to the following extracts from the statements of Mrs. Sehgal, Pandit Jawahar Lal Nehru and Shri Shriman Narain in the form of a written note filed at the time of arguments:—

Shrimati Manmohini Sehgal.

"The A.I.C.C. asked me to withdraw my nomination but I did not agree. The D.P.C.C., therefore, took disciplinary action against me. I was first suspended from the membership of the Congress and was thereafter expelled for six years. It caused me mental pain. *It is correct that Pandit Jawahar Lal Nehru called me on 12th February 1957—No one else was present.* At the meeting Pandit Jee advised me to retire from the contest and not to break my long Association with the Congress. After my retirement from the contest, A.I.C.C. withdrew their previous orders and I along with my workers were taken as members as before.

Court question.

"Shriman Narain asked me on the telephone to see him as he had a message from Pandit Jee for me. When I saw him, he said that feeling of regret prevailed on my having broken my connection with the Congress. He further said that Pandit Jee wanted to see me. Then I rang up to the Private Secretary to Pandit Jee and got appointment. "The workers were of the view that the wishes of Pandit Jee must be respected in all circumstances. "When I filed Nomination Papers, I did not anticipate that Pandit Jee would intervene at all."

Re-Examination.

"As Pandit Jee was about to leave Delhi, he asked me to convey my decision to Shriman Narain."

Pandit Jawahar Lal Nehru.

"I forget who spoke to me about it but it is obviously our policy that Congress people should not oppose each other in Elections and where such an event is likely to take place we tried to avoid contest between Congressmen. When the fact of Mrs Sehgal having sent in Nomination Papers was brought to my notice and I expressed my regret that there should be a possibility of such a conflict between Congress members. I regretted a conflict between Congress members and I probably spoke to Shriman Narain about it that such a conflict should be avoided. "As far as I remember I do not send for her but Shriman Narain suggested to her that she might see me. I cannot remember whether I had asked him to suggest this to her or not. Any how, he might have told her what I had said to him. I cannot naturally remember the words but obviously I must have told her that I had not liked idea of a contest between Congressmen."

Shri Shriman Narain.

"Of course this is correct that after her retirement, we advised the P.C.C. to withdraw the disciplinary action taken against her and her workers."

33. On the basis of the above extracts, it was contended that Manmohini Sehgal had definitely stated that Pandit Jawahar Lal Nehru called her on 12th February 1957 and advised her to retire from the contest and not to break long associations with the Congress, while Pandit Jawahar Lal Nehru in his statement has stated that he does not remember who spoke to him about it but it was obviously the policy of the Congress that Congress people should not oppose each other in election and that as far as he remembers he did not sent for her.

Now Shri Shriman Narain has given the sequence of the events which was conveniently not referred to by the counsel, in the synopsis of statements filed at the time of arguments. It reads as follows:—

"The position exactly is that A.I.C.C. or myself as General Secretary of A.I.C.C. did not move at all till the P.C.C. had taken action in the normal course according to rules. Subsequent to that, she contacted me in order to represent her case against the action taken by P.C.C. I replied to her that the action taken by the P.C.C. was in accordance with the prescribed rules of A.I.C.C. and it cannot do any thing further in the matter. When she contacted me, she expressed desire that she was ready to meet Panditji in this connection if time permitted. In

those days it so happened that meetings of the Central Election Committee were being held from day to day and in the course of those meetings, I conveyed that desire of Mrs. Sehgal to Panditji. Panditji replied that he was busy in other matters but if she was eager, he could spare some time. I conveyed this message to Mrs. Sehgal.

The witness further states that the message was an oral one and he informed that Panditji was busy but he could spare time and she could ask for time from the Private Secretary of Panditji.

Shri Joshi arguing on behalf of the petitioner on the question as to whether the action of Pandit Jawahar Lal Nehru amounts to corrupt practice within the ambit of Section 123(2) of R.P. Act, relied on a decision published in Government of India Gazette dated 23rd January 1958 in the matter of 'Narain Yashwant vs. Shri Raja Ram' by Election Tribunal, Alibeg, Bombay State. Particular reference was made to the observation of the Tribunal at page 229, reproduced as below:—

"The electoral right is also defined by the act u/s 79(d) as the right of a person to stand or not to stand or to withdraw from being a candidate or to vote or refrain from vote at an election. It is, therefore, clear that the interference or an attempt to interfere must be with the right of a person not to stand as or to withdraw from being a candidate."

The learned counsel emphasised that every adult citizen of India under the constitution has a right to vote or to stand as a candidate according to his own choice. In the exercise of this right, he is given complete freedom and any interference in that right would amount to undue influence. Reliance was placed on another decision published in Government of India Gazette dated 3rd March 1958, in the matter of 'Shri Datla Suryanarayana Raju vs. Shrimati Chodagam Ammanna Raja', by Tribunal at Rajahmundry (Andhra) as well as another decision published in Government of India Gazette dated 1st the matter of 'Narsima Rao vs. Shri Ralla Kula Jallaya, of Election Tribunal Rajahmundry (Andhra) wherein it was observed that the definition of undue influence includes 4 different forms of interference namely (1) interference indirect (2) interference direct, (3) direct attempt to interfere and (4) indirect attempt to interfere with the free exercise of electoral right. That the definition also includes such interference or attempt to interfere by any method and the rule definitely includes the method of inducement where there may be any compulsion although the inducement may be of such awful type as to leave no free will. There would of course be in such cases mental compulsion in a sense but it is not necessary that it should be a physical compulsion or that a threat must be held out by a person who interferes or attempts to interfere.

In the light of the dictum laid down in the cases discussed above, Shri Joshi argued that taking into consideration the statements of the above mentioned witnesses, it was clear that Mrs. Sehgal was made to see Panditji and an interview was arranged between her and Panditji. What transpired of course in the meeting can be judged from the statement of Mrs. Sehgal and Pandit Nehru. It was submitted that Pandit Jawahar Lal Nehru being a busy man could not give a very detailed version and it was evident from the statement of Mrs. Sehgal that she was called by Shri Nehru at the instance of Shri Narain and she did not go of her own accord. Adverting to these statements for the purpose of particular reference, Shri Joshi submitted that Pandit Nehru is a leader of the Congress and is in a position to exercise influence on a vast field with a source of patronage. That a politician is always for politics and this is borne from the statement of Shri Nehru. As such, the politicians are more concerned with the success of politics than other values of life and in his own words, when he says that he was interested in the success of Congress candidates including Mrs. Sucheta Kriplani, Shri Nehru would do any thing subject to his being a politician and a leader for the success of Mrs. Kriplani. The counsel at the same time submitted that Shri Nehru was his own witness and he is a truthful man but giving allowance to the fact that he was overwhelmed by his loyalty to the Congress organization, he has deposed accordingly. It was urged on the strength of these arguments that once it was established that Panditji exercised influence taking into consideration the disciplinary action to which he was a party, the influence would not remain due influence but would amount to undue influence within the dictates of Section 123(2). Referring to the statement of Mrs. Sehgal, stress was laid on the words

"Panditji, our beloved leader, appealed to me last evening and so I decided to retire."

Reference was also made to her letters dated 28th January 1957 (Ex. D.W. 25/A) and 25th February 1957 (Ex. D.W. 25/B) addressed to Shri Dhebar, President of the

Indian National Congress. It was argued that she was keen to continue the contest as borne out by the two letters and she must have taken the decision to retire under the influence of Pandit Jawahar Lal Nehru. This influence could not be called due influence. Lastly, the counsel, although having said in so many words that his witness Pandit Jawahar Lal Nehru is a truthful man yet contended that Pandit Ji was overwhelmed by the spirit of his party politics and in the witness box, truth hesitated to come out of his mouth. Finally, it was submitted that it was Shri Nehru's influence which was responsible for the success of Sucheta Kriplani.

34. On the other hand Shri Narula, Respondent's counsel replying to the arguments of this part of the issue made a short-shrift of the whole argument and submitted that Shrimati Manmohini Sehgal, Shri Jawahar Lal Nehru and Shri Shriman Narain, all three witnesses whose evidence has been criticised by the petitioner's counsel, are petitioner's own witnesses and in the light of their statements no influence was exercised much less undue influence and the arguments need no elaboration. Reliance was placed on the very definition of undue influence and reference was made to 'Mathai vs. K. C. Abraham', a Madras case published in X E.L.R., 1955 at page 397, paragraphs 26, 27 and 28 read as follows:—

"We shall now proceed to examine how the law stands. That freedom of election is the corner stone of representative institutions is a truism that cannot be gainsaid; and the source of much of the electoral law in this country is "the ancient patrimony of democratic ideas that is the heritage of Britain." In framing the Representation of the People Act, our Legislators have largely drawn on the corresponding statutes and the common law obtaining in England; and thought the Act does not run exactly parallel with English law in all respects; we think we are on firm ground in saying, that on the subject of how far clerical influence is permissible, the pronouncements of learned Judges embody in O'Malley and Hardcastle's Reports furnish sure and helpful guide.

Those pronouncements have been summarised by Parker in his standard work "Election Agent and Returning Officer" (1950 Edition) at page 305; and we can do no better than extract the following passage from that book:

"All clerical or spiritual influence is not, however, undue. In the proper exercise of their legitimate influence priests and clergy may lecture the people, and address their congregations upon the conflicting claims of the different candidates even in their chapels; Galway(1)—for a priest is a citizen and entitled to have his political opinions and to exercise his legitimate influence legitimately Tipperary(1). So also if priests believe that a spirit of antagonism to their church, religion or clergy has arisen, and recognised in a particular political party elements of danger to religion they may use their influence to assert and maintain due respect to religion, and may express their opinion, in suitable language, that issue of great importance to religion are involved in a pending political contest. But a priest must not pass the bounds of legitimate influence. He must exercise his just influence without denunciation, and he has no privilege to violate or abuse the law, or to interfere with the rights and privileges of other subjects.

Perhaps the locus classicus of the law on the subject is to be found in the judgment of Fitzgerald J. in Longford (5). "The catholic priest has, and he ought have, great influence. His position, his sacred character, etc. ensure it to him.... In the proper exercise of that influence on electors the priest may counsel, advise, recommend, entreat, and point out the true line of moral duty, and explain why one candidate should be preferred to another, and may if he thinks fit, throw the whole weight of his character in the scale; but he may not appeal to the fears, or terrors or superstition of those he addresses. He must not hold out hopes of reward here or hereafter, and he must not use threats of temporal injury, or of disadvantage, or of punishment hereafter. He must not threaten to ex-communicate or withhold the sacraments."

Reference was also made to another decision of election of Election Tribunal, Karwar in the matter of 'Narasinha Govind Shanbhag vs. Alva Joachim Pladad' published in Gazette of India January 1958 wherein at page 197, the learned Tribunal observed that one could exercise his undoubted influence to lead and not mislead his disciples. He is not only entitled to exercise his right to vote but he may use his legitimate influence in helping the election of the right candidate. It is the abuse of influence on his Part that the law aims to strike at and endeavour

to prevent. The law permits do influence and castigates undue influence. He can be said to exercise undue influence only if there is threat of spiritual censure or divine displeasure'.

It was also held in this case that undue influence like any other fraud must be established by evidence and cannot be arrived at by conjecture. It must be exercised with an intention to affect vote. The learned counsel concluded that Pandit Jawahar Lal Nehru is admittedly related to Mrs. Sehgal and he gave her advice on her seeking and even if it amounted to influence, it could not be undue influence for want of any coercion or threat in any form or manner, as deposed by Mrs. Sehgal herself.

35. Now this issue is short and simple inasmuch as the evidence led to establish undue influence was on the side of the petitioner only and it did not require any rebuttal or refutation because all three witnesses namely Shrimati Manmohini Sehgal who was said to have been influenced, Shri Jawahar Lal Nehru who is said to have exercised influence on her in the matter of retirement and Shri Shriman Narain who acted as an intermediary to convey certain message to bring about an interview between Pandit Nehru and Shrimati Manmohini Sehgal, have not supported the allegation of the petitioner. But the issue has assumed some seriousness if not heaviness because learned counsel for the petitioner Shri Joshi while arguing this issue was not precise and in a rigorous manner, of course in his right to criticise the statements of witnesses, at one time argued that Shri Jawahar Lal Nehru was a truthful man and a great man and he is to be believed being his own witness. At the same time, the counsel laid much emphasis and occupied the Tribunal for more than a day on this part of issue and made various observations to convince the Tribunal that Pandit Jawahar Lal Nehru under the stress of his party politics was hesitant to say in so many words that Shrimati Manmohini Sehgal retired on account of the influence exercised by him. The counsel accordingly has camouflaged the position by treating his witnesses as partisan if not hostile and in the absence of any argument on the side of the respondent by her learned counsel in relation to the observations which were taken note of in the very words of petitioner's counsel, it falls on the Tribunal either to dismiss the observations without any comment or to adjudge in the light of the evidence as it stands. The main argument on the side of the petitioner was that he was forced to call these witnesses because he had no other alternative to prove the issue and as such he took the risk of summoning witnesses of the opposite side. It was argued that in these circumstances, it was for the Tribunal not to attach undue importance to their status and treat them at their face value. Now the comments of the learned counsel viz. that truth was hesitant to come out from the mouth of Shri Nehru under the stress of party politics and that the politicians are only for politics and do not care for values of life, if allowed to go unnoticed it might leave a grievance for the petitioner that the argument advanced was sound and substantial and justice was not done. I, therefore, must attend to it. I need hardly say that judges can well afford to criticise the statements of any witness however great he may be and would not shirk the responsibility of criticising the statement for the purpose of credibility in the performance of their duties, if and when occasion arises including the Prime Minister of India. But it looks preposterous to me that a person of the stature of Pandit Jawahar Lal Nehru who on this day, when forces of power politics threaten the very spiritual values of life and when atomic desolation is threatening the mankind, brings his private conscience assimilated with truth and fearlessness in world politics unmindful of the repercussions, could possibly hesitate to say any thing about an individual case under the stress of party politics as argued by the petitioner's counsel. He has definitely stated in his deposition that he was concerned with the election all over India and any one election in its individual form was no concern of his. In the circumstances, it is idle to argue that he was interested in this particular case. It appears, the learned counsel, notwithstanding of the unequivocal statement of Mrs. Sehgal that no coercion or undue influence was brought upon her, has blatantly taken exception to the statement of Shri Jawahar Lal Nehru and has thus pitch-forked the discussion to enliven the issue. The arguments and the observations of the learned counsel are wholly devoid of any substance and the same must be repelled. The impression that the evidence has left upon me rather is that Shrimati Manmohini Sehgal who, in righteous indignation on disciplinary action, had written a letter Ex. P.W. 25/A to Shri Dhebar Bhai that 'there is electorate between God and Congress High Command to which she has appealed' and had filed her nomination papers as an independent candidate, on further introspection and in calmer moments reacted and approached Shri Shriman Narain complaining against the disciplinary action taken against her. And when Shriman Narain told her that it was D.P.C.C.'s work and A.I.C.C. could not do any

thing she expressed her desire to meet Panditji and it was on her request that Shriman Narain apprised Pt. Jawahar Lal Nehru of her desire for and gave the message to her that she could contact the Private Secretary of Panditji. Shri Jawahar Lal Nehru also says—

“As far as I remember I did not send for her but that Shriman Narain suggested to her that she might see me”.

To me, it appears that Pandit Jawahar Lal Nehru has attained a position of an ‘asylum’ for people who happen to be renegades, dissidents of one party or satyagrahis and strikers for the redress of a grievance. When they react on the step taken by them, they seek the refuge or harborage of Shri Jawahar Lal Nehru to resolve the imbroglio and save the situation created by them. That was so with Mrs. Sehgal, otherwise when she filed her nomination paper as an independent candidate and the D.P.C.C. took disciplinary action against her, she should have submitted to that. But she actually complained to Shriman Narain, General Secretary, A.I.C.C. against the action of D.P.C.C. which indicates that she did not like the disciplinary action and when she reacted and felt that it would be bad for her to get out of the congress, she looked to Jawahar Lal Nehru, her elder. The advice naturally was there as an elder of the family but at no time it was said that she will be coerced or she will be harmed in any manner if she did not agree. It was an advice and on that advice she put the matter before the workers and decided to retire. She has of course broadly stated that she was called by Pandit Nehru perhaps unintentionally, as she was not aware that in courts of law each simple fact is subjected to hair-splitting and thread-bare scrutiny in all its implications. At any rate, this part of her statement does not fit in with the sequence of events as narrated by Shriman Narain.

The only other argument advanced on the side of the petitioner was that the workers who had been expelled also agreed and said “Panditji ke kahne per phul charahne chahiye” and that it was tantamount to influence. The argument is wholly fallacious. If they availed the opportunity of advice, I do not understand how it could amount to undue influence. In the first place, my finding is that it was an advice only. Even if it was influence as Mr. Joshi states that whoever comes in contact with Panditji, he gets influenced. This is a tribute to his personality and by no stretch of imagination or reasoning can be treated as an undue influence. There is thus no substance much less merit in the allegations and this part (b) para (9) of issue No. 1 must fail and is decided against the petitioner.

One word with regard to the disciplinary action. The argument that the disciplinary action by itself is an injury is beyond the point. The corrupt practice, if any, relates to interference for the purpose of retirement only and if anything was done by the congress organization in the matter of disciplinary action before the nomination papers were filed by Mrs. Sehgal, this Tribunal is neither competent nor has jurisdiction to enter into that part of the question. It is a different matter that the congress organization did not consider the request of Mrs. Sehgal notwithstanding of her long services and notwithstanding of the fact that Mrs. Sucheta Kriplani had left the organization at one time and the resentment of Mrs. Sehgal was understandable, but as said above these are matters beyond the cognizance of the Tribunal and the issue as held above must fail.

Shri Joshi also discussed this part of the issue read with issue No. 2 namely, “If corrupt practices were committed by persons in the interest of the respondent, whether that materially affected the result of the election,” and argued that if it be taken that Shri Nehru and Shri Shriman Narain were proved to be agents of the respondent, they still acted in the interest of the respondent. The counsel proceeded that the question of material effect shall be looked into in this respect. Some decisions of election Tribunals were cited on the analogy of improper rejection of nomination papers and it was contended that the withdrawal of Mrs. Sehgal was analogous to the improper rejection of the nomination paper, and it materially affected the result of the election. The authority is not in point in the light of a decision of the High Court of Madhya Pradesh published in Government Gazette dated 29th May, 1958 appeal No. 129/57 in the matter of ‘Her Highness Maharani Vijaya Raje Scindia vs. Moti Lal s/o Jugal Kishore’. Their lordships held in this appeal that in the case of improper rejection of a nomination paper, the candidate was improperly kept out while in the case of withdrawal when he sent his notice, he can be described of having stood out and stood out by choice. He sent the notice of withdrawal and authorised the person to carry it and further authorised to withdraw the security amount without which no candidate can stand for any election and, therefore, he nullified his nomination effectively of his own accord. That in these circumstances, it was difficult to say that the

election could be declared void as a matter of law by correlating this acceptance of an irregular notice of withdrawal with clause (c) of section 100(1) of the Act.

Furthermore, in view of the finding above of part (b) para 9 of issue No. 1, the question of material effect in issue No. 2 on the result of the election does not arise, and this part of the issue is also negated against the petitioner.

38. Coming to part 9(c) of issue No. 1, namely (that a false statement was published in Daily Newspaper 'Milap' to the effect that the respondent Shrimati Kriplani was going to be taken as Rehabilitation Minister in the forthcoming Union Cabinet after the election, Shri Joshi arguing on behalf of the petitioner submitted that there was a rumour to this long before the news was published in Milap that the respondent was going to become Rehabilitation Minister and it was with this background that the issue was to be considered. The counsel contended that Maharani Gurcharan Kaur and Shri Balraj Madhok, the two candidates were refugees and the attempt on the part of the respondent was to placate the refugees and with this object, this rumour was given currency by the congress party and as such it amounts to undue influence as contemplated u/s 123(2) of the R.P. Act. Reference was made to the statement of P.W. Mangal Dass and the news item published in Milap dated 3rd March 1957. It was urged that this was a fraudulent device adopted by the Respondent. Reliance was placed on the commentary in Election Law & Election Petitioner by Ved Vyas, under the heading "Fraudulent Devices" at page 229.

Shri Narula, learned counsel for the respondent in reply submitted that there is no evidence on the record to show that the news was given currency earlier to publication and the publication itself is on the third page in an unobtrusive place in Milap. Furthermore, the news emanated from Lucknow and no evidence has been led to show about the source of the news. It was also urged that whatever the news may be it does not constitute any corrupt practice because it was more or less a news of somebody which was circulated as a rumour and the provisions of Section 123(2) of R.P. Act cannot be invoked for the purpose of proving any such alleged corrupt practice.

Now section 123(2) of the R.P. Act defines undue influence as follows:—

"Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person, with the free exercise of any electoral right."

The definition no doubt is in general terms but it has an element of compulsion and it is an abuse of influence that will constitute undue influence. The so called device namely that some one from Lucknow sent the news as a rumour or opinion of the Member of the Congress High Command, does not fall within the ambit of the definition. Fraudulent device as such was mentioned in the old Act to be a corrupt practice in paragraph (2) part (1) of 1st Schedule of the Corrupt Practices Order 1936. But under the new Act, corrupt practices have been specified and catalogued and the same are only to be recognized. Fraudulent device has been considered a ground under the English law but this is not so in India and a mere allegation of fraud without further stating other ingredients of a corrupt practice in which fraud is an essential ingredient will not be sufficient to justify the enquiry into it. On merits also, the news emanated from Lucknow and the same has not been connected by any other evidence with the Respondent or that it was published within the knowledge of the respondent or her election agent, much less consent which under the new Act is the necessary ingredient as discussed in the first issue. At any rate, Mr. Joshi in reply to the arguments of the respondent's counsel did not touch this issue and may have seen the futility of any more argument in this connection. There is thus no merit in part (c) of paragraph (9) of issue No. 1 as well and the same is negated.

39. Part (d) of para (9) relates to the expenses on which neither any evidence was adduced nor any arguments were addressed. It appears that this part (d) of paragraph (9) before the framing of issues was given up and did not form a part of the issue as indicated in the order of 19th October, 1957 to the effect that the petitioner had conceded that the money presented by way of purses did not amount to expenses. This disposes of issue No. 1.

On issue No. 2 as to whether the result of the election was materially affected, so far the first part relating to publication of news about the retirement of Maharani Gurcharan Kaur and the role of Ranbir Editor of 'Milap' is concerned, it has been discussed above with the finding that the result was not materially affected and it needs no repetition or elaboration. Regarding part (b) of paragraph (9) (as to whether undue influence was exercised by Shri Jawahar Lal

Nehru on Shrimati Manmohini Sehgal), in view of the finding that no undue influence was exercised, the question as to the result of the election having been materially affected does not arise. Issue No. 2 accordingly is answered against the petitioner.

40. Issue No 3 was not pressed by the petitioner's counsel and the plea was given up at the very outset in the opening address by the learned counsel Shri Joshi. The onus of issue No. 4 was on the respondent. This issue was not pressed by the Respondent's counsel, at the time of arguments nor did it form the subject of controversy during the proceedings.

This disposes of all the four issues and in view of the findings issues Nos. 1, 2 and 3 are negatived and decided against the petitioner. Issue No. 4 namely "that the petition does not lie" having not been pressed, has been answered in favour of the petitioner.

ORDER

As the result of the findings, it is held that the petitioner has failed to prove that any corrupt practices were indulged or committed by the respondent No. 1 or by her election agent, or by any agent with the consent of the respondent or the election agent or any person in the interest of the respondent which can justify the Tribunal to set aside the Election of the Respondent, Mrs. Sucheta Kriplani, the returned candidate. The petition accordingly fails and is dismissed with costs which are assessed at Rs. 250 only. No certificate of fees was filed.

KARTAR SINGH CAMPBELLPURI,
Member, Election Tribunal Delhi

Announced.

Delhi;

Dated, the 25th August, 1958.

APPENDIX A

ORDER

1. Issue No. 1.—Corrupt practices are mentioned in para 9 of the petition. The para. is divided in sub-paragraphs and each sub-paragraphs deals with one corrupt practice. I shall take them up one by one.

2. Para 9(a).—The alleged corrupt practice that a false statement about the withdrawal or retirement from contest of Shrimati Gurcharan Kaur was published by Shri Ranbir in the Daily Milap dated 2nd March 1957 and that Mr. Ranbir was a canvassing agent of the respondent. Reading this sub-paragraph with annexure 'A' it is clear that full particulars of the alleged corrupt practice appear so far as it attributes the part to Shri Ranbir, Editor of Milap. The name of any other person or election agent is not given. Reading them together it is clear that it cannot be construed as having made any allegation that the respondent published the objectionable false statement. There is a general allegation that this false statement was made and published orally through agents or canvassers. Their names have not been given. In other words, the persons who are alleged to have committed the corrupt practice by making this oral statement have not been specified.

3. Para 9(b).—The allegations only mean that the respondent was a Congress candidate, that Pt. Jawahar Lal Nehru is an important person belonging to the Congress Party, and that in that capacity he made a speech. No allegation has been made that his speech was objectionable in any way. The second part of this paragraph refers to undue influence exercised by Shri Jawahar Lal Nehru in persuading Shrimati Manmohani Sehgal to retire from the contest. The mode in which undue influence was exercised purports to have been specified in annexure 'B'. She was threatened with expulsion from the Congress Organization with her supporters, that her husband is a Government servant working in the Central Sectt., and that she otherwise derives benefit from Government and because of these factors, Shri Jawahar Lal Nehru as the Prime Minister of India could bear his influence on her. I am of opinion that the particulars of this corrupt practice are sufficient.

4. Para 9(c).—The allegation is that a day or two before the day of polling it was circulated by publication in the Milap and orally throughout the constituency that the respondent, if elected would become Minister of Rehabilitation in the

Union Cabinet. A large number of voters are displaced persons and they were obviously influenced by the circulation of this news item. It is alleged that this news was obviously false to the knowledge of the respondent and her agents. The allegations made therein might, if proved, amount to undue influence, which includes the practice of coercion. The particulars of the voters, who were thus influenced, have not been given but it is stated that it was the class of refugees—voters, who were influenced. I am of opinion that the particulars of this allegation are sufficient so far its commission is attributed to the Editor of the Milap in para. 4 as regards the publication of the alleged false statement in the Daily Newspaper Milap by its Editor. The counsel for the petitioner argued that the respondent has also been alleged to have published a false statement. This does not follow from paragraph 5 of annexure 'C'. If sub-paragraph (c) be taken as containing an allegation that the respondent issued a false statement in a Daily Newspaper Milap of New Delhi, then the particulars of the false statement by reference to the date, time and place of the issue of the paper have not been given. Therefore, reference to the annexure 'C' has become necessary and this allegation is to be taken as qualified by particulars given in annexure 'C'.

5. Para 9(d).—Particulars of this corrupt practice are set out in annexure 'D'. It is concluded that non-inclusion of the amount which the respondent received from refugees is not objectionable. The only other item which is stated not to have been included in the annexure and which, if included, would make the total expenditure exceed the permissible limit. It is contained in clause (3) of annexure 'D'. The date, amount, and the manner of expenditure have not been sufficiently particularised.

6. I dispose of this issue accordingly.

7. At this stage, Mr. Joshi counsel for the petitioner requested that an opportunity should be given to him to examine the decision of the Tribunal on this issue with a view to apply for amendment of the petition, if necessary. That is a reasonable request and ought to be granted. The decision of issue No. 2 will depend on how far Mr. Joshi is permitted to amend the particulars.

8. While considering the above issue it came to the notice of the Tribunal that an allegation about non-compliance with rules having a material effect on the election has been made in para. 10. The particulars are, however, lacking. Mr. Joshi would like to consider the desirability of furnishing particulars to make this paragraph complete, by obtaining a proper order from the Tribunal. The matter stands adjourned to 30th October, 1957. Copies of this order may be supplied free of costs to the parties to expedite the proceedings.

RAMESHWAR DIAL,
Election Tribunal, Delhi.

Announced.

The 19th October, 1957.

ORDER

1. This is an application for amendment of the petition. The respondent's preliminary objection that the petition was bad inasmuch as particulars had not been fully given was considered at length and decided by my order, dated 19th October, 1957. After that order had been pronounced the petitioner's counsel asked for time to make an application for amendment of the petition. As the petition did not clearly specify the manner in which amendment or amplification of the original one was sought, I ordered the petitioner to make clear the amendments which he sought to make in the petition. This was done in the form of a draft amended petition, filed by him.

2. The present order is to be read in the light of my earlier order, dated 19th October, 1957. Corrupt practices are mentioned in para. 9 of the petition, which has four sub-paragraphs, each sub-paragraph dealing with a different kind of corrupt practice. In considering para 9(a) I had found that the particulars of the corrupt practice as regards the publication of a statement by Shri Ranbir, Editor of Milap, as a canvasser and agent of the respondent, were sufficiently given in schedule 'A'. In the main petition it was, however, alleged that such statements were not only published in the daily Milap but were also circulated orally to the agents or canvassers of the respondent. It was observed that it was a very general allegation. The persons who are alleged to have committed the corrupt practice by making this corrupt practice had not been specified. The proposed amendment seeks to give the time, place and the names of the persons, who made such oral statements. I am of opinion, that this allegation that such oral

statements were made, was of the vaguest kind. The petitioner applied his mind and attempted to give full particulars in Schedule 'A', but not a word appeared about such oral statements in the way of particulars. I am of opinion, that it will be unfair to allow such an allegation to be supplemented at a later stage. This gives rise to all sorts of bad practices in the matter of procuring doubtful evidence. I, therefore, order that there shall be no amendment of para 9(a).

3. As regards para. 9(b), I had observed that the particulars of the corrupt practice given in the Schedule 'B' were sufficient. No occasion for the amendment of that sub-paragraph arose. This is sought to be amended by adding a new paragraph (bb), the scope and purpose of which does not appear to me to go beyond what has already been stated in the main sub-paragraph (b) of the original petition. The addition of this sub-paragraph is, therefore, disallowed.

4. As regards the allegations made in paragraph 9(c), I had found that the particulars given in schedule 'C' with which it was to be read were sufficient. It was nowhere alleged in the sub-paragraph that any oral statements in relation to the prospective appointment of the respondent as a Rehabilitation Minister in the Union Cabinet was made. The proposed sub-paragraph (cc) seeks to add the publication of such oral statements. This cannot be allowed.

5. In my order of 19th October, 1957, I had observed that the particulars of allegation that the respondent herself issued a false statement in Daily Newspaper Milap of New Delhi, as regards date, time and place of the issue of the paper were not given. The proposed amendment does not seek give those particulars. The amendment of sub-paragraph (c) is, therefore, disallowed. No amendment of sub-paragraph (d) has been proposed.

6. That disposes of the application for amendment.

7. From my order dated 19th October, 1957, and the order passed today, on the application for amendment of the petition by the petitioner, it is clear that there shall be no enquiry into the petition as regards allegations relating to oral statements made by agents and canvassers of the respondents mentioned in paragraph 9(a) and similarly there shall be no enquiry into the allegation that the respondent herself issued a false statement in Milap of New Delhi mentioned in sub-paragraph (c), at the trial. As regards other allegations, the petition is held to be competent and they shall be tried.

8. The case is to come up for framing of issues on 10th December, 1957. The case will be taken up at 2 P.M.

Announced.

The 7th December, 1957.

RAMESHWAR DIAL,
Election Tribunal, Delhi.

[No. 82/117/57/13608.]

By Order,
DIN DAYAL, Under Secy.

